

The Honorable Ronald B. Leighton
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LASHONN WHITE,

NO. 3:12-cv-05987-RBL

Plaintiff,

vs.

DEFENDANT PIERCE COUNTY'S
TRIAL MEMORANDUM

CITY OF TACOMA, RYAN KOSKOVICH,
MICHAEL YOUNG, MICHAEL LIM,
CAROL KRANCICH, PIERCE COUNTY,
ANNE JACKSON, JOHN AND/OR JANE
DOE, NUMBERS 1 THROUGH 10,

Defendants.

Defendant Pierce County submits their trial brief in defense of Pierce County.

I. INTRODUCTION

The Pierce County Detention and Corrections Center ("PCDCC") is a jail and pre-detention facility owned and operated by Defendant Pierce County, a Washington municipal corporation. PCDCC is a holding facility for inmates, including individuals arrested and pending trial, persons waiting for removal to another jail or penitentiary, or inmates with sentences of less than one year. It is the arresting agency, not PCDCC, which decides who to place within the jail and what charges are brought. The court and prosecutors, not PCDCC,

1 decide when a person may be released.

2 During her short detention at PCDCC, Plaintiff was booked, detained, and released the
3 same as other inmates. Plaintiff admits she did not ask for any auxiliary aids, including an
4 ASL interpreter, at any time during her detention at PCDCC. Plaintiff knew she could ask
5 for an ASL interpreter, she alleges she asked TPD for an ASL interpreter. Plaintiff's jail
6 records demonstrate PCDCC provided Plaintiff with auxiliary aids, such as access to a pen
7 and paper during booking, to ensure Plaintiff could effectively communicate and fully
8 participate in the program of incarceration like others.

9 Plaintiff is determined to present a case that, because she is deaf, she has a limited
10 ability to understand reading and writing. However, that assertion is given lie by numerous
11 demonstrations that Plaintiff has used written communication for expressing herself
12 throughout her life, most recently reaffirmed by the note between Plaintiff and her father upon
13 Plaintiff's release from PCDCC. Ex. B 21.

14 **II. INCARCERATION**

15 Arresting Agency: On April 07, 2012, at approximately 1:00 am, Plaintiff LaShonn
16 White was brought to PCDCC by the Tacoma Police Department ("TPD") following her
17 arrest for assault and obstruction. Plaintiff was arrested following a fight Plaintiff had with
18 another woman at her apartment. That woman, Sophia Johnson, suffered injuries requiring
19 ambulance transportation to the hospital. Plaintiff was brought to PCDCC to be booked and
20 detained. The Tacoma police officers advised Ms. White of her rights and noted that "Subject
21 Read and Signed at PC Jail." Ex B 3.

22 Typically, police charges lead to set amounts for bail for detainees. Ex B 1-3. Police
23 officers complete their paperwork in the sally port (entry way) of the jail, and then pat down
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1 the detainee in this area while PCDCC corrections officers observe the search. Once
2 completed, detainees are admitted to the jail for pre-booking and inventory of property.

3 Pre-Booking and Property Inventory: Following Plaintiff's arrest by Tacoma Police
4 and transportation to PCDCC and completion of arrest paperwork, PCDCC observed plaintiff
5 being patted down and then opened the closed door to booking to begin the pre-booking
6 process. Corrections Deputy Kristi Herbison met with Plaintiff and made a written inventory
7 of Plaintiff's property. Ex. B. 12. Next, Deputy Herbison began a Jail Receiving Medical
8 Screening. Ex. B 7, B 8. This screening is not equivalent to an admission assessment for
9 hospital care or a primary care appointment. Its focus is to identify newly arrived detainees
10 who need diversion to the hospital for evaluation of potential emergency physical and/or
11 mental conditions prior to booking. Those detainees who are not admitted to PCDCC remain
12 in the custody of the arresting agency. The jail receiving medical screening also allows
13 corrections deputies to identify and initiate treatment of physical and/or mental conditions
14 requiring attention by a PCDCC nurse.

15
16 Deputy Herbison determined Plaintiff's wounds needed treatment by a nurse and left
17 the receiving form to be completed by Booking Nurse Shelly Hull. Nurse Hull noted that
18 Plaintiff was deaf and had been tazed. She also established that Plaintiff could read and write.
19 Accordingly, she had Plaintiff read each line on the receiving screening form and indicate by
20 shaking her head as to answer each medical question. During this screening, Plaintiff did not
21 indicate she took medications, had previously attempted suicide, required a special diet, or
22 had any chronic medical problems. Plaintiff admits she did not want to reveal personal
23 medical matters to be recorded by the jail.

24
25 Nurse Hull noted Plaintiff's injuries, provided immediate care for these injuries, and

1 placed Plaintiff on “nurse call.” In placing Plaintiff on nurse call, the medical clinic was
2 notified to call an escort and have Plaintiff brought to the medical clinic each morning to
3 receive daily medical care to evaluate and clean her scratches. Nurse Hull also noted on the
4 Behavior Log, available and utilized by all PCDCC employees, that staff members were to
5 “use written instructions when possible” when communicating with Plaintiff. Ex. B. 14.
6 Booking Nurse Hull did not note that Plaintiff needed a special diet or had other chronic
7 conditions because Plaintiff admits she hid those conditions.

8 Booking: PCDCC staff members are required to complete numerous forms that
9 require personal information to be obtained from every detainee. Most information obtained
10 is acknowledged by the detainee’s signature. *See* Ex. B 5-7, B 9, B 11-15.

11
12 Plaintiff and Deputy Herbison completed the forms involved in the booking process
13 by using written communication. Deputy Herbison noted Plaintiff was deaf and that an ASL
14 interpreter was to be provided for court proceedings. Plaintiff was permitted to use her
15 personal cell phone to locate a phone number and was then allowed to use the TTY phone in
16 booking to contact her cousin.

17 During the booking process, Plaintiff made it clear to Deputy Herbison that Plaintiff
18 believed the wrong person had been arrested and that Plaintiff was stunned she was brought to
19 jail. Such claims are commonplace in Deputy Herbison’s profession. Plaintiff was allowed to
20 look up her cousin’s phone number in her cell phone and with assistance used the Booking
21 TTY to call her cousin and report she was in jail and ask her to make arrangements. The
22 amount of bail set by the TPD was pointed out to Plaintiff by Deputy Herbison. There is a
23 digital reader board in Booking with bail bonding contact information. Plaintiff changed her
24 soiled clothes and was given clean jail clothes, than directed to mug shots and fingerprinting.
25

1 After the initial booking forms were completed, Deputy Herbison executed an Initial
2 Housing Assessment, Ex. B 10, and determined Plaintiff would proceed to Unit 5 West for
3 intake.

4 Detention: Corrections Deputies then escorted Plaintiff to the 5 West Unit where she
5 was assigned a cell. Plaintiff's cellmate tried to comfort her. During times Plaintiff was out
6 of her cell she was able to communicate with another hard of hearing inmate. Other inmates
7 befriended and shared food with Plaintiff that she thought would be better for her diet.
8 Corrections Deputies used written notes and Plaintiff admits she understood those notes and
9 through notes and gestures she was able to follow jail directions and instructions.
10

11 At 8:00 am on April 07, 2012, only seven hours after Plaintiff was booked, she was
12 again treated for her injuries from her fight. Inmates on nurse call are called for by the
13 medical clinic each morning and escorted by Corrections Deputies to the clinic for treatment.
14 Nurse Anne Jackson, a Licensed Practical Nurse (LPN) treated Plaintiff's fight wounds.
15 Nurse Jackson knew from the Behavior Log, B 14, that Plaintiff was deaf, that Plaintiff had
16 scratches that needed treatment, and that Nurse Jackson was to check and make sure Plaintiff
17 was doing "okay." Nurse Jackson did not know there were "other medical conditions" as
18 none were noted on the screening form. Nurse Jackson took Plaintiff into the treatment room,
19 checked her face, asked if Plaintiff was "okay" by leaning in closely and speaking to Plaintiff.
20 Ms. Jackson believed that Plaintiff understood her and Plaintiff appeared to be able to read
21 lips. Jackson cleaned Plaintiff's wounds, applied ointment, and then called for an escort to
22 take Plaintiff back to her unit. Jail staff and Nurse Jackson were not aware of Plaintiff's
23 medical condition of an imperforate anus, this was because Plaintiff chose to conceal this
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1 condition from staff members, a fact to which she has since admitted in depositions with
2 Defendant's counsel.

3 On the following morning of April 08, 2012, less than 48 hours after Plaintiff's
4 admittance to the jail, Plaintiff was treated for the third time at PCDCC. Nurse Jackson again
5 took Plaintiff into the treatment room, and this time provided Plaintiff with two more packs of
6 ointment so Plaintiff could apply it herself. At this time, Plaintiff indicated to Nurse Jackson
7 that her hand hurt by putting out her hand, showing it to Nurse Jackson, and making noises
8 that sounded like "hand," "hand," while touching her hand. After noting some swelling in
9 Plaintiff's hand, Nurse Jackson made an appointment for Plaintiff to see a doctor the
10 following morning, Monday, April 09, 2012. *See* Ex. B 17 (Nurse Jackson's treatment
11 records).

12
13 Plaintiff did not attend the urgent care appointment as she was released from PCDCC
14 when TPD dismissed the charges. The record establishes that after she was released Plaintiff
15 did not seek any further medical treatment.

16 Release: Once the court was informed that the charges against Plaintiff were being
17 dismissed by the arresting agency, the court ordered Plaintiff to be released. Her property and
18 clothes were returned to her, and Plaintiff was greeted at the jail release door by her partner
19 and taken home to see her father.

20 Reading and Writing Ability: Plaintiff has lived most of her life as a deaf person. She
21 wore hearing aids as a child, but found them uncomfortable and stopped wearing them at an
22 early age. Defendant does not contest Plaintiff is deaf.

23
24 Plaintiff's experience with written communication with others is extensive. Plaintiff
25 was raised in a family where no one knew sign language. After Plaintiff learned to read and

1 write, she routinely exchanged written communications with her family. Plaintiff is a high
2 school graduate and has attended college. Although Plaintiff's employment history has been
3 spotty, she has worked in a laundry facility and a hotel where she exchanged written notes to
4 communicate with co-workers. While hospitalized in 2005, her medical records note that
5 Plaintiff can read lips and that medical staff should exchange written notes with her for
6 treatment. Ex. B. 29.

7
8 Despite this abundant evidence of Plaintiff's ability to communicate with reading and
9 writing, Plaintiff intends to argue she is severely limited in her ability to read and write. This
10 misplaced opinion is contrasted sharply by Plaintiff's ability to read and provide detailed
11 answers on medical forms, Ex. B 30, or her application for vocational rescoring, which
12 requires detailed answers to personal and financial questions that are read and answered
13 without auxiliary aids. Ex. B 31, B 32.

14 Damages: Plaintiff's damages, if any, are minimal. Plaintiff does not appear to allege
15 any damage arose from her medical treatment at PCDCC. Moreover, Plaintiff's own
16 therapist, Ms. Gentry-Southard, was unable to find sufficient criteria to diagnose Plaintiff with
17 Post Traumatic Stress Disorder ("PTSD"), even though Ms. Gentry-Southard did so.

18 Additionally, Plaintiff's behavior demonstrates her unwillingness to mitigate any
19 damages that could have arisen from her short stay at PCDCC. After attending only six
20 therapy sessions, Plaintiff determined that was sufficient and stopped going. Although
21 Plaintiff was advised to keep a journal and practice mindfulness, she has failed to follow these
22 treatment regimens. Other conditions identified by Dr. Wilson, Plaintiff's newly arrived
23 expert, pre-exist Plaintiff's detention at PCDCC.
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III. CLAIMS AND DEFENSES

A. **PLAINTIFF’S CLAIMS OF DISCRIMINATION IN VIOLATION OF THE REHABILITATION ACT OF 1973, AMERICANS WITH DISABILITIES ACT, AND WASHINGTON LAW AGAINST DISCRIMINATION FAIL AS A MATTER OF LAW.**

Plaintiff fails to demonstrate facts to which she is entitled to relief under the federal statutes of the Americans with Disabilities Act, 42 U.S.C. §12132, the Rehabilitation Act of 1973, 29 U.S.C. § 794, or Washington’s Law Against Discrimination, RCW 49.60 et. seq. Claims under the Rehabilitation Act are analyzed under the ADA because the language of the two statutes is substantially the same. *Doe v. Univ. of Md. Med. Sys. Corp.*, 50 F.3d 717, 726 (4th Cir. 1995).

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participating in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.” 42 U.S.C. § 12132. Claims under this statute must allege four elements: 1) that the plaintiff is an individual with a disability; 2) that the plaintiff is otherwise qualified to participate in or receive the benefit of some public entity’s services, programs, or activities; 3) that the plaintiff was either excluded from participation in or denied the benefits of the public entity’s services, programs, or activities, or was otherwise discriminated against by the public entity; and 4) that such exclusion, denial of benefits, or discrimination was by reason of the plaintiff’s disability. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

To prove a prima facie case of discrimination by a place of public accommodation under RCW 49.60.215, a plaintiff must demonstrate: 1) she has a disability as recognized by the statute; 2) the defendant’s establishment is a place of public accommodation; 3) plaintiff was discriminated against by receiving treatment not comparable to the level provided to

1 individuals without disabilities; and 4) the disability was a substantial factor causing the
2 discrimination. *Fell v. Spokane Transit Authority*, 128 Wash. 2d 218, 911 P.2d 1319 (1996).
3 Plaintiff's WLAD claim will fail because Plaintiff was treated the same as other non-disabled
4 inmates and a jail is not a place of public accommodation. RCW 49.60.040(2).

5 Moreover, Pierce County will demonstrate that Plaintiff was provided services,
6 programs, and activities comparable to those of non-disabled inmates during her time at
7 PCDCC such that Plaintiff's claims should be denied under the ADA, Rehabilitation Act, and
8 WLAD.

9 Although Plaintiff now claims she should have been provided treatment for her
10 condition of an imperforate anus, Plaintiff also admits she did not intend to communicate this
11 condition to jail staff. *See* Dep. of Lashonne White, 102 ("Q: You saw the nurse several
12 times, at least twice while you were in jail. Did you tell her about your bowel problem? A:
13 Twice, yes, that's correct. No, I did not."); ("Q: Did you ever tell any of the jail staff that you
14 were having this problem? A: No. Q: Why not? A: ... I was very embarrassed ... I wanted
15 to take care of the situation myself.") Because Plaintiff admits she did not have any intention
16 of communicating her condition with jail medical personnel, Plaintiff should not be permitted
17 to collect relief on jail staff's failure to discover this condition. When Plaintiff was released
18 from jail she did not seek further treatment for her wounds.

19 These facts demonstrate that Plaintiff was provided with the same services accorded to
20 non-disabled inmates: she was successfully booked into jail, was housed safely and securely,
21 was provided additional medical care on two different occasions, and was scheduled for an
22 urgent care appointment which Plaintiff would have been provided had she remained in jail.
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1 Because Plaintiff does not demonstrate she was denied access to any service, program,
2 or activity during her time at PCDCC, and because Defendant Pierce County has
3 demonstrated that Plaintiff was provided the same services as those provided to nondisabled
4 inmates, Plaintiff's claim for discrimination under the ADA, Rehabilitation Act, and WLAD
5 should be denied.

6 **B. PIERCE COUNTY PROVIDED PLAINTIFF WITH REASONABLE**
7 **ACCOMMODATIONS.**

8 Plaintiff's claim of discrimination for failure to provide reasonable accommodations
9 and sufficient auxiliary aids should also fail as a matter of law. Federal regulations on point
10 require that "a public entity shall take appropriate steps to ensure that communications with
11 applicants, participants, and members of the public with disabilities are as effective as
12 communications with others," 28 C.F.R. § 35.160 (a), and that "a public entity shall furnish
13 appropriate auxiliary aids and services where necessary to afford an individual with a
14 disability an equal opportunity to participate in, and enjoy the benefits of, a service, program,
15 or activity conducted by a public entity." *Id.* at (b). Primary consideration is given to the
16 requests of the individual with disabilities. *Id.* at (2). In the instant case the Plaintiff never
17 requested an accommodation, including not asking for an ASL interpreter.

18
19 Plaintiff was accorded sufficient auxiliary aids during her time at PCDCC such that
20 her communications with jail staff were comparable with communications with others. Nurse
21 Anne Jackson, Nurse Jackson effectively communicated with Plaintiff to discern Plaintiff's
22 ailments, treat her superficial wounds with ointment, and schedule Plaintiff for an urgent care
23 appointment for the following Monday to treat her swollen hand.

24 Although Plaintiff now claims she should have been provided an ASL interpreter,
25 Plaintiff also admits she did not request such an accommodation during her time at PCDCC.

1 Because Defendant Pierce County has demonstrated that Plaintiff did not request an
2 accommodation and Plaintiff was provided sufficient auxiliary aids that allowed her to
3 effectively communicate with jail staff during her time at PCDCC.

4 **C. PLAINTIFF HAS NOT ESTABLISHED THAT PIERCE COUNTY'S**
5 **CONDUCT DIRECTLY CAUSED COMPENSABLE DAMAGES TO**
6 **PLAINTIFF.**

7 Finally, Plaintiff's claims should be denied because Plaintiff has failed to demonstrate
8 she suffered damages as a result of Defendant Pierce County's conduct. Under all three
9 claims of actions invoked by Plaintiff, causation and damages are required elements for relief.

10 **1. Plaintiff Fails to Demonstrate Pierce County's Conduct Caused Damages**
11 **to Plaintiff.**

12 Under the ADA, the Rehabilitation Act, and WLAD, Plaintiff must prove causation.
13 Under the ADA, Plaintiff must demonstrate that impermissible, discriminatory motives were a
14 motivating factor in the adverse action by the Defendant. *See Head v. Glacier Northwest,*
15 *Inc.*, 413 F.3d 1053, 1055 (9th Cir. 2005). Under WLAD, Plaintiff must demonstrate that
16 "the disability was a substantial factor causing the discrimination." *See Weyer v. Twentieth*
17 *Century Fox Film Corp.*, 198 F.3d 1104, 1118-19 (2000). Neither can be met here.

18 Plaintiff fails to meet either requirement for causation in her allegations against Pierce
19 County. Plaintiff fails to demonstrate that PCDCC or its agents were motivated by an intent
20 to discriminate against Plaintiff's disability in any way. Because Plaintiff fails to demonstrate
21 the conduct on the part of Defendant Pierce County was motivated by impermissible
22 intentions, her claim for discrimination under the ADA and WLAD should be denied.

23 **2. Plaintiff Fails to Demonstrate Compensable Damages Available to Her.**

24 Plaintiff's evidence will fail to establish compensable damages to Plaintiff such that
25 her claims should be denied. Monetary damages are available under the ADA/RA only upon

1 a showing of deliberate indifference. *Mark H v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008).

2 To recover damages under Title II of the ADA or the Rehabilitation Act, Plaintiff must
3 prove intentional discrimination on the part of the Pierce County. *Duvall v. County of Kitsap*,
4 260 F.3d 1124, 1135 (9th Cir. 2001). Intentional discrimination is proven by showing
5 Defendant was deliberately indifferent in that Defendant possessed both a knowledge that a
6 harm to a federally protected right is substantially likely and a failure to act upon that
7 likelihood. *Id.* If a plaintiff has alerted the entity to her need for accommodation, the entity is
8 on notice that an accommodation is required and plaintiff has satisfied the first element of the
9 deliberate indifference test. *Id.* That prong is not met here as Plaintiff never asked for an
10 accommodation. A public entity, upon receipt of a request for accommodation, is required to
11 undertake a fact-specific investigation to determine what constitutes a reasonable
12 accommodation for the Plaintiff. *Id.* In order to prevail on the second element of the
13 deliberate indifference test, Plaintiff must prove the Defendant's failure to act was a result of
14 conduct that is more than negligent and involves an element of deliberateness. *Id.*

16 Moreover, Plaintiff fails to demonstrate that, if these accommodations were
17 insufficient, Defendant Pierce County deliberately denied Plaintiff sufficient
18 accommodations. Plaintiff does not allege she requested and was denied an ASL interpreter.
19 She does not allege Pierce County staff intentionally chose not to provide her with sufficient
20 accommodations. Accordingly, Plaintiff fails to articulate facts upon which she is accorded
21 monetary damages under the ADA and Rehabilitation Act.

23 Additionally, Plaintiff cannot claim damages for punitive damages under the ADA or
24 the Rehabilitation Act. *See Barnes v. Gorman*, 536 U.S. 181 (2002) (holding that punitive
25 damages are unavailable under Title II of the Civil Rights Act of 1964, the statute which sets

1 for the remedies for suits under the Rehabilitation Act. The court further reasoned that,
2 because punitive damages may not be awarded under Title II, it follows that they may not be
3 awarded in suits brought under §202 of the ADA and §504 of the Rehabilitation Act).

4 Because Plaintiff has failed to articulate facts upon which monetary damages could be
5 awarded to her, and because the ADA does not permit punitive damages, Plaintiff's claims
6 should be denied.

7
8 MARK LINDQUIST
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9
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CERTIFICATE OF SERVICE

On February 10, 2014, I hereby certify that I electronically filed the foregoing DEFENDANT PIERCE COUNTY'S TRIAL MEMORANDUM with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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